

 ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

KENNETH S. BANNING, JR.

:  
: C.A. No. 08 - 001  
:  
:  
:  
:

v.

ALIN AUGUSTIN MASCA and  
MAHAI DORU POP

**NOTICE OF REMOVAL**

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF DELAWARE:

Defendants, Alin Augustin Masca and Mahai Doru Pop, by and through their attorneys,  
Rawle and Henderson, LLP, respectfully aver as follows:

1. Plaintiff has commenced a civil action against defendants in the Superior Court of Delaware in and for New Castle County. (*See Complaint attached as Exhibit "A."*) The Complaint, being the original process in this case, was deemed served on defendant Mahai Doru Pop, no earlier than December 6, 2007. (*See attached letter as Exhibit "B"*)

2. Accordingly, this Notice of Removal was timely filed within thirty (30) days of receipt of the information indicating that the jurisdictional amount may be satisfied pursuant to 28 U.S.C. §1446 (b).

3. In the Complaint, Plaintiff alleged that as a result of the accident at issue in this lawsuit, he:

" was hit in the head and thrown off the South Dock #7 by the open door suffering serious injuries possibly permanent, to his head neck, lower back, left hip and required surgery with C7 radiculopathy requiring anterior cervical discectomy, interbody fusion and required an application of an anterior cervical plate, that Plaintiff has endured much pain and suffering, will continue to suffer in the future because of the nature of his possible permanent injuries and may incur medical expenses beyond no-fault coverage and will continue to incur medical expenses in the future...." sustained permanent, serious personal injuries, including pain and suffering as well as mental and emotional injuries. "*See Exhibit A ¶7.*"

FILED  
CLERK, U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
2008 JAN -2 AM 9:13

4. Based upon a fair reading of the Complaint, plaintiff has set forth a claim in which an amount in excess of the jurisdictional limit of \$75,000, exclusive of interest and costs, may be at stake.

5. Defendant, Alin Augustin Masca at all material times, is and was a resident of the State of Michigan. *See Exhibit A.*

6. Defendant, Mahai Doru Pop, at all material times was and is a resident of the State of Michigan. *See Exhibit A.*

7. At all material times hereto, based upon information and belief, plaintiff is and was a citizen of Delaware. *See Exhibit A.*

8. Diversity of citizenship within the meaning of 28 U.S.C. §1332, exists between plaintiffs and defendants since:

- (a) plaintiff is a citizen and resident of the State of Delaware; and
- (b) defendants are not a citizens or residents of the State of Delaware.


9. Furthermore, diversity of citizenship existed at the time the action sought to be removed was commenced and continues through the time of filing of this notice, such that defendants are entitled to removal pursuant to 28 U.S.C. §1441 as amended, and 28 U.S.C. §1446.

10. Defendant, Alin Augustin Masca is represented by the firm of Rawle & Henderson, LLP and consents to the Removal of the litigation to United States District Court.

WHEREFORE, defendants, Alin Augustin Masca and Mahai Doru Pop pray that the above-captioned action now pending in the Superior Court of Delaware in and for New Castle

County, be removed there from to this Honorable Court.

RAWLE & HENDERSON LLP

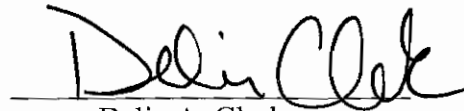
By:   
Delia A. Clark (DAC #3337)  
Attorneys for Defendants, Alin Augustin Masca  
and Mahai Doru Pop  
300 Delaware Avenue, Ste. 1015  
Wilmington, DE 19801  
(302) 778-1200

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the within-captioned Notice of Removal Pursuant to 28 U.S.C. §1446(d) was served via first-class mail, postage prepaid, on counsel for plaintiff listed below:

Martin A. Schagrin  
Berkowitz & Shagrin  
1218 Market street  
PO Box 1632  
Wilmington, DE 19899-1632

RAWLE & HENDERSON LLP

  
Delia A. Clark

Dated: December 31, 2007

Exhibit "A"

MAS/bp  
8/22/07

Filed: Aug 24 2007 1:49 PM  
Transaction ID: 16079041  
Case No. 07C-08-220 M.M.



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

KENNETH S. BANNING, JR.,

Plaintiff,

v.

ALIN AUGUSTIN MASCA and  
MAHAI DORU POP,

Defendants.

) C.A. No.: 07C-  
)  
) ARBITRATION CASE  
)  
) TRIAL BY JURY OF TWELVE DEMANDED

COMPLAINT

1. Plaintiff, Kenneth S. Banning, Jr., at all times pertinent hereto, resides at 10 Bethel Court, Newark, Delaware 19713.

2. Defendant, Alin Augustin MasCA, at all times pertinent hereto, resides at 3240 Christopher Lane, Apt. 344, Keego Harbor, Michigan 48320.

3. Defendant, Mahai Doru Pop, at all times pertinent hereto, resides at 3240 Christopher Lane, Apt. 121, Keego Harbor, Michigan 48320.

4. On or about Friday, November 4, 2005, at approximately 6:15 a.m. Plaintiff, Kenneth S. Banning, Jr., was on South Dock #7 at the Daimler Chrysler plant in Newark, Delaware, when a tractor trailer bearing Michigan license plate RU9561, while backing up to South Dock #7 with his door open struck Plaintiff, Kenneth S. Banning, Jr., in the head causing injuries to his head, neck, lower back and left hip. Defendant Alin Augustin Masca was operating said tractor trailer with permission and as an employee of Defendant Mihai Doru Pop.

5. Upon Information and belief, at all times pertinent hereto, Defendant, Alin Augustin Masca, was acting as a servant, agent or employee of Defendant Mihai Doru Pop.

DENIAL OF THIS ALLEGATION MUST BE MADE BY AFFIDAVIT PURSUANT TO 10 DEL.C. §3916.

6. Defendant, Alin Augustin Masca, was negligent and Defendant Mihai Daru Pop, imputably negligent under the Doctrine of Respondeat Superior in the following respects:

(a) Drove his vehicle at a greater speed than reasonable and prudent under the conditions without having due regard to the actual and potential hazards then existing, failing to control his speed as necessary to avoid Plaintiff in violation of 21 Del.C. §4168(a).

(b) Operated his vehicle in a careless and imprudent manner without due regard for weather and traffic conditions then existing in violation of 21 Del.C. § 4176(a);

(c) Failed to maintain a proper lookout and his common law duties;

(d) Failed to give full time and attention to the operation of his vehicle in violation of 21 Del.C. § 4176(b); and

(e) Drove his vehicle in a careless and inattentive manner in violation of 21 Del.C. § 4176(a).

7. As a direct and proximate result of the negligence of the Defendants aforesaid, Plaintiff, Kenneth S. Banning, Jr., was hit in the head and thrown off the South Dock #7 by the open door suffering serious injuries, possibly permanent, to his head, neck, lower back, left hip and required surgery with C7 radiculopathy requiring anterior cervical discectomy, interbody fusion, and required an application of an anterior cervical plate, that Plaintiff has endured much pain and suffering, will continue to suffer in the future because of the nature of his possible permanent injuries and may incur medical expenses beyond no-fault coverage and will continue to incur medical expenses in the future, and is responsible for a subrogation lien to Selective Insurance in the amount of \$11,418.36. Said amount represents benefits paid by the Workmen's Compensation carrier.

WHEREFORE, Plaintiff, Kenneth S. Banning, Jr., demands judgment against the Defendants, jointly and severally, for general and special damages as a jury may assess in addition to post-judgment interest and costs of this action.

BERKOWITZ & SCHAGRIN, P.A.

BY: 

MARTIN A. SCHAGRIN, ESQUIRE (ID #151)  
1218 Market Street  
P.O. Box 1632  
Wilmington, Delaware 19899-1632  
Phone: (302) 652-3155  
Attorney for Plaintiff

DATED: August 23<sup>rd</sup>, 2007



Exhibit "B"

LAW OFFICES  
**BERKOWITZ SCHAGRIN & JONES, P.A.**

GERALD Z. BERKOWITZ  
MARTIN A. SCHAGRIN  
JUDY M. JONES

1218 MARKET STREET  
P.O. BOX 1632  
WILMINGTON, DELAWARE 19899-1632  
(302) 652-3155  
TELECOPIER: (302) 852-2888

SUSSEX COUNTY  
515 THE HENLOPEN  
REHOBOTH BEACH, DELAWARE  
19971  
(302) 227-0315

December 6, 2007

**REGISTERED MAIL RA 614 388 516 US  
RETURN RECEIPT REQUESTED**

Mihai Doru Popp  
3221 Christopher Lane, Apt. 121  
Keego Harbor, MI 48320

RE: **NOTICE**

Kenneth S. Banning, Jr., v. Alin Augustin Masca and Mihai SDoru Popp  
C.A. No. 07C-08-223 MMJ

Dear Mr. Popp:

At the request and on behalf of Kenneth Banning, Jr., I have commenced a civil action against you in the Superior Court of the State of Delaware in and for New Castle County, State of Delaware, captioned as follows:

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

**KENNETH S. BANNING, JR.**

**Plaintiff,**

**v.**

**ALIN AUGUSTIN MASCA and MIHAI  
DORU POPP,**

**Defendants.**

)  
)  
)  
)  
) **C.A. No. 07C-08-223 (MMJ)**  
) **ARBITRATION CASE**  
) **JURY TRIAL BY TWELVE DEMANDED**  
)  
)  
)

This action is brought to recover damages for injury to personal property incurred by plaintiff resulting from an automobile accident which occurred on November 4, 2005.

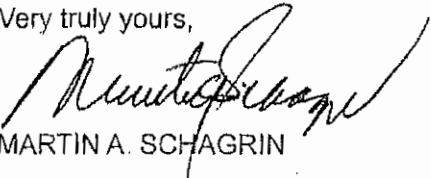
The Writ of Summons directed against you and a copy of the Complaint in this action was served upon the Secretary of State of the State of Delaware, by virtue of a statute made and provided for such cases under the provisions of which such service is as effectual as if it had been made on you personally in the State of Delaware.

A copy of the Writ of Summons and a notice of such service by way of Sheriff's return thereon are enclosed together with a copy of the Complaint in this action which sets out in detail the nature of the action in this suit.

Mihai Doru Popp  
December 6, 2007  
Page 2

By reason of said service, a judgment can be entered against you by default, unless an appearance and answer are entered on your behalf as stated in the Summons.

Very truly yours,



MARTIN A. SCHAGRIN

MAS/bp  
Enclosures

**ORIGINAL****CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Kenneth Banning, Jr.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF New Castle  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Martin A. Schagrin  
Berkowitz & Schagrin  
1218 Market Street, PO Box 1632  
Wilmington, DE 19899-2669  
(302)-652-3156

**DEFENDANTS**

Alin Augustin Masca and Mahai Doru Pop.  
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN) Delia Clark, Esq.  
Rawle & Henderson, LLP  
300 Delaware Avenue, Ste. 1015, Wilmington, DE 19801  
(302) 778-1200

08-001

**II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)**

- ☐ 1. U.S. Government Plaintiff  
☐ 2. U.S. Government Defendant  
☐ 3. Federal Question (U.S. Government Not a Party)  
☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

For diversity cases only

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated or Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)**

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/ PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Exc. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employer's Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury--Med Malpractice <input type="checkbox"/> 365 Personal Injury--Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395FF) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RIS (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights		

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)**

28 U.S.C. §§ 1332 &amp; 1446 (d). Motor vehicle accident with personal injuries alleged.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ YES ☐ NO

**VIII. RELATED CASE(S) IF ANY (See Instructions):**

JUDGE

DOCKET NUMBER

DATE: December 31, 2007

SIGNATURE OF ATTORNEY OF RECORD

Delia A. Clark

**FOR OFFICE USE ONLY**

RECEIPT # AMOUNT \$ APPLYING IFP JUDGE MAG. JUDGE

FILED  
CLERK, U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
2008 JAN -2 AM 9:13

# RAWLE & HENDERSON LLP



08-001

DELIA A. CLARK  
215-575-4291  
dclark@rawle.com

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[www.rawle.com](http://www.rawle.com)

300 DELAWARE AVENUE  
SUITE 1015, P.O. Box 588  
WILMINGTON, DE 19899-0588

TELEPHONE:(302) 778-1200  
FACSIMILE:(302) 778-1400

December 31, 2007

**Hand Delivered via Courier**

United States District Court  
J. Caleb Boggs Federal Building  
844 N. King Street  
Wilmington, DE 19801

Re: Kenneth S. Banning, Jr. v. Alin Augustin Masca, et al  
Our File No. 301604

Dear Sir/Madam:

Enclosed is an original and one copy of a Notice of Removal (w/diskette) to be filed with your office. Kindly file same and return a time-stamped copy of same to me in the pre-addressed stamped envelope. Also enclosed is our check, in the amount of \$350.00, representing your filing fee in this regard.

Thank you for your attention in this matter.

Very truly yours,

RAWLE & HENDERSON LLP

By:

  
Delia A. Clark

DAC/slb

Enclosures

cc: Martin A. Schagrin, Esquire (w/encl. – Notice of Removal)

FILED  
CLERK, U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
2008 JAN -2 AM 9:12